

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

THOMAS THEODORE BROOKS,

Defendant and Appellant.

2d Crim. No. B216238
(Super. Ct. No. F397300)
(San Luis Obispo County)

ORDER MODIFYING OPINION

[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on March 16, 2010, be modified as follows:

On page 4, the first full paragraph is deleted and the following paragraph is inserted in its place, including adding footnote 2 at the end of the paragraph, which will require that the footnote on page 1 be a numbered footnote (footnote 1):

Recently, in *People v. Moret* (2009) 180 Cal.App.4th 839, the appellate court affirmed an order granting probation on condition that the defendant abstain from using medical marijuana notwithstanding a physician's recommendation. The lead opinion discusses section 11362.795. (*Moret*, at pp. 853-855 (lead opn. of Haerle, J.)) That section provides in part: "(a)(1) Any criminal defendant who is eligible to use marijuana pursuant to section 11362.5 may request that the court confirm that he or she is allowed to use medical marijuana while he or she is on probation or

released on bail. [¶] (2) The court's decision and the reasons for the decision shall be stated on the record and an entry stating those reasons shall be made in the minutes of the court." There would be no reason for the Legislature to speak of the court's "decision" or to require the court to state reasons for its decision on the record if the court had no discretion to prohibit the use of medical marijuana.[fn.2]

[fn.2] The concurring opinion stated that the discussion of section 11362.795 was not appropriate because, among other things, the effect of the statute was not briefed. (*People v. Moret, supra*, 180 Cal.App.4th at p. 857 (conc. opn. of Richman, J.).)

There is no change in the judgment.